



"To enrich lives through effective and caring service"



Santos H. Kreimann
Director

Kerry Silverstrom
Chief Deputy

ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#12 JULY 20, 2010

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

July 20, 2010

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**RIGHT OF ENTRY PERMIT FOR CHUMASH NATIVE AMERICAN DISCOVERY CENTER AND
CREEK RESTORATION PROJECT
NICHOLAS CANYON BEACH, CITY OF MALIBU
(THIRD DISTRICT)
(3 VOTES)**

SUBJECT

This Board letter requests approval of the Wishtoyo Foundation's continued operation and maintenance of its Chumash Native American Discovery Center (demonstration village and habitat restoration) and Creek Restoration Project at Nicholas Canyon Beach. Right of Entry Permit 10-002 sets forth the conditions and provisions by which Wishtoyo will operate the Discovery Center.

IT IS RECOMMENDED THAT YOUR BOARD:

1. Find that the minor changes to the Chumash Native American Discovery Center and Creek Restoration Project described in this Board letter do not involve new significant environmental effects or a substantial increase in the severity of previously identified environmental effects than were considered in the previously approved Negative Declaration for the Nicholas Canyon Creek Restoration Project and Chumash Discovery Center in 2004, making reliance on the Negative Declaration appropriate under the California Environmental Quality Act (CEQA);
2. Authorize the Director of the Department of Beaches and Harbors to issue a new Right of Entry Permit No. 10-002 (Exhibit A) to the Wishtoyo Foundation to allow the Foundation continued access to Nicholas Canyon Beach for ceremonial and site visitations, habitat restoration, construction and operation of a demonstration village, Native American studies, and an archaeological program; and
3. Authorize the Director of the Department of Beaches and Harbors or his designated

representative to issue subsequent permits to the Wishtoyo Foundation after this new permit lapses, provided the Director deems it appropriate and the Wishtoyo Foundation's use of Nicholas Canyon Beach remains substantially the same.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

Your Board has previously authorized the Director of the Department of Beaches and Harbors (Department) to issue a right of entry permit to the Wishtoyo Foundation to operate the Chumash Native American Discovery Center (Discovery Center) and conduct habitat restoration at Nicholas Canyon Beach (Exhibit B). That right of entry permit (04-020) had a five-year term and will expire on July 31, 2010. The Wishtoyo Foundation would like to continue to operate the Discovery Center and continue its creek restoration, and, thus, has asked to renew the permit for another five years, proposing also the minor addition of one recreational trailer, two small sheds, and a new awning in the ceremonial circle to the project.

Right of Entry Permit 10-002 (Permit) outlines the agreement between the Department and the Wishtoyo Foundation with respect to the Foundation's use of County property for another five years. The purpose of the Permit is for ceremonial and site visitation, habitat / creek restoration, and operation of a demonstration village, Native American studies, and archaeological programs. The term of the Permit is five years and requires a yearly rent amount of \$100. Either party can terminate the Permit upon 30 days' written notice. Under the Permit, Wishtoyo is required to obtain County approval before commencing any improvements or alterations to the property and to notify the Department before any events with 100 or more attendees. The Wishtoyo Foundation is not permitted to bring groups to the beach, because of slope erosion concerns. Moreover, the Wishtoyo Foundation is responsible for the maintenance of and graffiti removal from all improvements placed on the premises and must abide by all the conditions set forth in its Coastal Development Permit issued by the City of Malibu. Under the Permit, the Wishtoyo Foundation will be able to continue its habitat restoration, which includes non-native plant removal from the Discovery Center grounds and the creek bed, replanting of appropriate and culturally important native species, and installation of above-ground irrigation.

Implementation of Strategic Plan Goals

The recommended action is consistent with Goal 3, "Community and Municipal Services", Strategy 1, "Cultural and Recreational Enrichment", of the County's Strategic Plan, because the Discovery Center provides access to a significant cultural resource to all citizens and visitors of Los Angeles County and beyond. The Foundation's habitat restoration is consistent with Goal 1, "Operational Effectiveness", Strategy 3, "Environmentally Responsible Practices", of the County's Strategic Plan by promoting environmental stewardship, through clean up of the creek and removal of non-native and introduction of native plants, as well as by conveyance to visitors of the Chumash way of life, which has a strong ethic of land stewardship.

FISCAL IMPACT/FINANCING

The Wishtoyo Foundation is responsible for all costs associated with the operation and maintenance of the project. The Foundation has already received several grants for its activities and expects to receive several grants and contributions in the future. Much of the required work at the site is carried out by volunteers ranging from Boy and Girl Scouts to high school and college youth. There is no fiscal impact to the County related to this Permit presently or in the future.

Operating Budget Impact

There will be no impact to the operating budget of the Department of Beaches and Harbors.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The County of Los Angeles is the legal owner of Nicholas Canyon Beach located in the City of Malibu, on which the Wishtoyo Foundation would like to continue to operate its Discovery Center. The Wishtoyo Foundation already has on-site the following: (1) twelve traditional houses; (2) one ceremonial circle with fire pit and sweat lodge; (3) one canoe workshop and learning area; (4) fish drying racks; (5) mortar stones; (6) one demonstration cemetery; (7) one 10' x 30' recreational trailer storing archeological artifacts and equipment; (8) one 8' x 10' storage shed (approved by City of Malibu in 2009); and (9) one portable toilet. This new Permit authorizes the following additional structures: a 10' x 10' fabricated shed; a new awning in the ceremonial circle; a 30-foot recreational trailer to serve as an office; and the 8' x 10' storage shed approved by the City of Malibu in 2009. These improvements are not to be used for general Wishtoyo Foundation purposes or any purpose not specifically related to the Discovery Center

In 2005, the Wishtoyo Foundation obtained a Coastal Development Permit (CDP) from the City of Malibu to construct and operate the Discovery Center (Exhibit C) and recently obtained approval from the City of Malibu to continue its use under the previously issued CDP with the minor additions to the project described in this Board letter. The City of Malibu informed the Wishtoyo Foundation that the proposed additions are consistent with the previously issued CDP, and, therefore, no amended or new CDP is required (Exhibit D).

ENVIRONMENTAL DOCUMENTATION

In 2004, your Board approved the Negative Declaration (ND) for the Discovery Center with respect to the Wishtoyo Foundation's use of the premises for ceremonial and site visitations, habitat / creek restoration, construction and operation of a demonstration village, Indian studies, and an archaeological program.

Other than the proposed minor additions to the project of one 30 foot long recreational trailer, the ceremonial circle awning, and two small sheds, there are no other proposed additions or expansions to the original scope of Permit 04-020. The proposed minor additions to the project are not substantial, are minor in nature, and raise no new environmental impacts than were considered in the previously approved ND. It is, therefore, appropriate under CEQA to rely on the previously approved ND for this Permit.

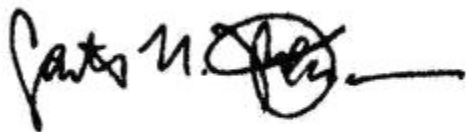
IMPACT ON CURRENT SERVICES (OR PROJECTS)

The Chumash Native American Discovery Center and Creek Restoration Project provides a unique environmental and educational resource on an underutilized portion of County land.

CONCLUSION

Please return one approved copy of this letter to the Department of Beaches and Harbors.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Santos H. Kreimann", followed by a horizontal line.

SANTOS H. KREIMANN
Director

SHK:KS:PW:SP:mr

Enclosures

c: Chief Executive Officer
County Counsel
Executive Officer, Board of Supervisors



EXHIBIT A
LOS ANGELES COUNTY DEPARTMENT OF BEACHES AND HARBORS
13837 Fiji Way, Marina del Rey, California 90292

PERMIT NO. 10-002

Effective date: **08/01/10**

Expiration date: **07/31/15**

BEACH/FACILITY (Premises): Nicholas Canyon bluff top area as per Exhibit A

PERMITTEE:

Wishtoyo Foundation
1591 Spinnaker Drive
Suite 203
Ventura, CA 93001

CONTACT:

Lin Myerson, Projects Administrator
Phone #: (805) 658-1120 2#
Fax #: (805) 658-1121
E-mail : lin@wishtoyo.org

PURPOSE OF PERMIT: Ceremonial and site visitation, habitat / creek restoration, and operation of a demonstration village, Native American studies, and an archaeological program (collectively "Discovery Center").

EQUIPMENT TO BE USED: Two 10' x 30" recreational trailers; two 8' x 10' storage sheds; one portable toilet; twelve traditional houses; one ceremonial circle with fire pit, sweat lodge, and awning; one canoe workshop; fish drying racks; mortar stones; demonstration cemetery; and above-ground irrigation piping.

STAGING AREA: N/A

APPLICATION DATE: _____

PROCESSING FEE: _____ 0

DEPOSIT: _____ 0

YEARLY RENT: _____ \$100

TOTAL DUE: _____

RECEIPT NO. _____

ISSUE DATE: _____

SANTOS H. KREIMANN, DIRECTOR

By: _____

Chief Property Manager
Asset Management Division

**THIS PERMIT IS SUBJECT TO THE TERMS AND CONDITIONS LISTED BELOW
AND TO THE PROVISIONS LISTED UNDER THE "GENERAL PROVISIONS" SECTION HEREIN**

1. Permittee shall pay rent in the amount of \$100 per year on or before each anniversary of the Effective Date for the duration of this Permit and any extension period in consideration for the privileges granted herein.
2. The term of this permit is five years. The Director of the Department of Beaches and Harbors (Department) or his designated representative can renew this Permit, provided that there are no significant changes to the scope of work as set forth in this Permit, in which case the Permit renewal shall be presented to the Los Angeles County Board of Supervisors for review and approval.

PERMIT NO. 10-002

3. Permittee, in an effort to help prevent beach erosion, shall not allow any groups organized by the Permittee onto the beach.
4. Permittee shall not commence any construction, improvements, or alterations to the Premises or place any structures, vehicles, or other personal property on the Premises before submitting a site plan and/or construction plan to and receiving approval from the Department, in addition to other required permitting processes.
5. The Permittee is only authorized to place on site equipment and improvements that are specifically related to the Discovery Center and as described in "Equipment to be Used". Improvements are not to be used for general Wishtoyo Foundation Purposes.
6. Habitat restoration will include non-native plant removal from the Discovery Center area and San Nicholas Creek area and the planting of culturally important non-invasive species, maintained through use of above-ground irrigation.
7. Permittee, at the expiration or termination of the Permit, shall restore the Premises to the same condition it was at the time Permittee first entered the Premises.
8. Permittee is responsible for any and all damage done to the Premises by Permittee and its agents, contractors, subcontractors, invitees, visitors, and anyone holding under the Permittee. Permittee shall promptly repair any such damage as soon as Permittee is aware of the damage but not later than 10 days upon receipt of notification from the Department.
9. Permittee shall be responsible for the maintenance and cleaning of and the graffiti removal from the Equipment To Be Used and any other improvements subsequently authorized by the Department for placement on the Premises. The portable toilet shall be secured to the ground to prevent it from being knocked down or turned over.
10. Permittee shall procure and pay for all utilities required for its use of the Premises.
11. Permittee agrees to keep and perform all provisions contained in any required permit issued (including specifically Coastal Development Permit No. 04-035) or to be issued to Permittee by any governmental agency or commission. Permittee must be able to demonstrate to the satisfaction of the Department that it has obtained and will maintain for the duration of the Permit term all permits necessary for its project or activity, including permits not directly related to the Premises, prior to the effective date of this Permit. Failure to comply with this condition shall constitute a material breach of contract upon which the Department may immediately terminate or suspend this Permit.
12. Permittee agrees to keep all advertising signs and marketing material off the Premises. Permittee will be allowed to place informational signs on the Premises for the purpose of the permitted activities. Permittee shall obtain prior written approval of the Director of the Department for such informational signs.
13. This Permit does not grant any special parking privileges unto Permittee. Permittee shall pay the posted parking lot entry fee for each vehicle upon entry into the lot and shall obey all posted parking lot rules and regulations.
14. Permittee shall notify the Department no later than two weeks before any scheduled event involving 100 or more attendees.
15. Permittee agrees to conduct the permitted activities in a courteous and non-profane manner, to operate without interfering with the use of the Premises by the Department or the public, except as herein permitted, and to remove any agent, servant or employee who fails to conduct permitted activities in the manner heretofore described.

PERMIT NO. 10-002

16. Permittee acknowledges that this Permit is issued by the County of Los Angeles to Permittee for the intended activities and is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Permittee. It is expressly understood by Permittee that in permitting the right to use the Premises, no estate or interest in real property is being conveyed to Permittee, and that the right to use is only a nonexclusive, revocable and unassignable permission to occupy the Premises in accordance with the terms and conditions of the Permit for the purpose of conducting the permitted activities.

17. GENERAL PROVISIONS

- A. Permittee has examined the Premises and knows the conditions thereof. Permittee accepts the Premises in the present state and condition and waives any and all demand upon the Department for alteration, repair, or improvement thereof. Permittee shall make no alteration or improvements to the Premises without prior written approval from the Department. Permittee shall arrange for and bear the cost of any other permits required by Federal, State or local law, site preparation, installation of utilities, treatment of surface, enclosure of Premises, insurance premiums, utility bills, and other costs of any nature whatsoever, which are necessary in connection with or appurtenant to the operation and maintenance of Premises as used by the Permittee. The Department will bear no responsibility for the cost of any such expenditure, for any work performed by Permittee, or for any work ordered done by Permittee.
- B. Permittee may terminate this Permit at any time by giving the Department no less than 30 days' advance written notice of intention to terminate. However, the termination shall not be effective unless Permittee has complied with all of the following:
- Vacated the Premises.
 - Removed all improvements Permittee has constructed or placed upon the Premises, if applicable.
 - Restored the Premises to as good a condition as existed on the day possession of Premises was taken by Permittee, allowing for the ordinary wear and tear associated with the normal usage during occupancy and to reimburse the Department for any damage done to the Premises.
 - An authorized County representative shall inspect the site for safety hazards before a release is issued. Until a release is issued, Permittee shall continue to be responsible for the condition of the Premises.
- C. The Department may terminate this Permit at any time by giving Permittee no less than 30 days' advance written notice of intention to terminate. Upon receipt of such notice, Permittee shall vacate the Premises as required herein. Permittee agrees that should it fail to vacate as herein provided, the Department or its authorized agents may enter upon said Premises and remove Permittee's personal property therefrom, and in this event, Permittee waives any and all claims for damages against the County, its officers, agents, or employees. Permittee shall reimburse County for all expenses incurred by County plus maximum interest allowed by law accruing from the day County incurred the expenses until such time as the principal and interest are fully paid by Permittee. Nothing herein shall be deemed a waiver of any rights of the County to demand and obtain possession of the Premises in accordance with law in the event Permittee violates any part of any of the terms or conditions herein.
- D. It is understood and agreed to be part of the herein consideration that the Department may temporarily suspend or terminate the Permit without notice to Permittee in order to allow the performance by County, its officers, agents, and employees, of work necessary to protect persons or property, including the Premises, from impending danger, hazard or harm.
- E. Permittee shall keep Premises and any improvements it constructed or placed on Premises in good working order and maintain such in a neat, clean, and orderly condition at all times during occupancy and

PERMIT NO. 10-002

not permit graffiti, rubbish, tin cans, garbage, etc., to accumulate, nor to use or allow use of Premises for any illegal or unauthorized purposes, and to comply with all State laws and local ordinances concerning Premises and the use thereof.

- F. It is understood and agreed that County shall not be responsible for any damage to Premises or injuries to persons or property that may arise from or be incidental to the use and occupancy of Premises, or for damages to the property of Permittee, or for injuries to the person of Permittee, Permittee's agents, servants, successors, subtenants, invitees or others who may be on Premises at anyone's invitation, arising from or incidental to the use and occupancy of Premises by the Permittee or anyone under the Permittee and/or its agents, contractors, employees or assigns. Permittee agrees to indemnify, defend, and hold harmless the County for such claims and liability pursuant to the condition immediately below.
- G. Permittee shall indemnify, defend, and hold harmless County and its Special Districts, elected and appointed officers, employees and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs and expenses (including attorney and expert witness fees), arising from or connected with the activities of, or operation and maintenance of the Premises by, Permittee or its agents, contractors, employees or assigns on the Premises.
- H. This Permit shall cancel and terminate any prior oral or written agreement, if any, between the Department and Permittee for use of the Premises, as of the commencement date of this Permit.
- I. This Permit may create a possessory interest upon which a property tax may be levied. In such event, Permittee shall pay before delinquency all such taxes or assessments.
- J. Without limiting Permittee's indemnification of the County, Permittee shall at its own expense take out and maintain in force, at all times during the term of this Permit, a policy or policies of insurance covering Premises. Such insurance shall be provided by insurer(s) satisfactory to the County. At a minimum, the policy or policies shall meet the following minimum criteria:
- **Commercial General Liability** insurance (providing scope of coverage equivalent to ISO policy form CG 00 01), naming County and its Agents as an additional insured, with limits of not less than:

General Aggregate:	\$2 million
Products/Completed Operations Aggregate:	\$1 million
Personal and Advertising Injury:	\$1 million
Each Occurrence:	\$1 million
 - **Automobile Liability** insurance (providing scope of coverage equivalent to ISO policy form CA 00 01) with limits of not less than \$1 million for bodily injury and property damage, in combined or equivalent split limits, for each single accident. Insurance shall cover liability arising out of Permittee's use of autos pursuant to this Permit, including owned, leased, hired, and/or non-owned autos, as each may be applicable.

The County of Los Angeles, its Special Districts, Elected Officials, Officers, Agents, Employees and Volunteers (collectively County and its Agents) shall be provided additional insured status under Permittee's **General Liability** policy with respect to

PERMIT NO. 10-002

liability arising out of Permittee's ongoing and completed operations performed on the Premises. County and its Agents additional insured status shall apply with respect to liability and defense of suits arising out of the Permittee's acts or omissions, whether such liability is attributable to the Permittee or to the County. If County is not named as an Additional Insured in the original general liability policy, an endorsement will be necessary to satisfy this provision.

- This Permit No. 10-002 is included as part of the insured premises to be evidenced by an endorsement or a similar instrument. (If the Premises and this Permit number are not included in the original policy, an endorsement will be necessary to satisfy this provision.)
- **Workers' Compensation and Employers' Liability** insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, which includes Employers' Liability coverage with limits of not less than \$1 million per accident and which specifically covers the persons and risks involved in this Permit. Permittee understands and agrees that all persons furnishing services to the Permittee pursuant to this Permit are, for purposes of Workers' Compensation liability, employees solely of Permittee and not of County. Permittee shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries arising from or connected with services performed on behalf of Permittee pursuant to this Permit.

All policies of insurance shall be with a company or companies authorized by law to transact insurance business in the State of California. Prior to the commencement date of this Permit, Permittee shall furnish to the Department a copy of the policy(ies) of insurance evidencing Permittee's insurance coverage. Failure on the part of Permittee to procure or maintain required insurance shall constitute a material breach of contract upon which the County may immediately terminate or suspend this Permit.

Upon renewal of any of the policies of insurance, Permittee shall furnish to the Department a Certificate of Insurance evidencing Permittee's continued insurance coverage. The Department shall be given notice in writing at least 30 days in advance of cancellation or modification of such policy(ies).

In the event any of the policies are changed or if the insurance carrier is changed, Permittee shall provide the Department a copy of the replacement policy(ies) meeting the minimum requirements as above noted.

- K. Permittee expressly acknowledges that Permittee is a post acquisition tenant and shall not be entitled to any claim of status as a "displaced person" as such is defined in Section 7260 of the Government Code of the State of California. Permittee hereby acknowledges Permittee's ineligibility for relocation assistance as provided in Government Code Sections 7260 through 7277, inclusive, as it exists or as it may be amended.
- L. Permittee shall not commence nor permit any construction or the placement of any improvements or other structures on or within the Premises without first submitting plans and specifications for advance written approvals by the County's Department of Public Works, Building and Safety Division.
- M. The County may, at its sole discretion, enter Premises to conduct Environmental Site Assessments. Upon review of such Assessments, the Department may, at its sole discretion, terminate this Permit consistent with General Provisions C and D. Permittee shall bear any and all responsibility, expense, and liability incurred in the cleanup and treatment of any hazardous materials or condition found on the Premises caused by Permittee's use, storage, or treatment of any hazardous materials on or within the Premises.
- N. Each County Lobbyist as defined in Los Angeles County Code Section 2.160.010, retained by Permittee, shall fully comply with the County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure

PERMIT NO. 10-002

on the part of any Lobbyist retained by Permittee to fully comply with the County Lobbyist Ordinance, shall constitute a material breach of this Permit upon which the County may terminate or suspend this Permit.

ACCEPTANCE

I, the authorized and undersigned signatory for the Permittee, have read, understood and agreed to all the terms, conditions, and restrictions contained in this Permit.

PERMITTEE:

Signature: _____

Name in Print: _____

Title: _____

Date: _____

EXHIBIT B



To enrich lives through effective and caring service



Stan Wisniewski
Director

Kerry Gottlieb
Chief Deputy

October 5, 2004

ADOPTED
BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

80

OCT 05 2004

Dear Supervisors:

Violet Varona Lukens
VIOLET VARONA-LUKENS
EXECUTIVE OFFICER

**APPROVE THE ATTACHED NEGATIVE DECLARATION
FOR THE NICHOLAS CANYON CREEK RESTORATION PROJECT
AND CHUMASH DISCOVERY CENTER
(3RD DISTRICT)(3 VOTES)**

IT IS RECOMMENDED THAT YOUR BOARD:

1. Consider the Negative Declaration (Attachment A) for Nicholas Canyon Creek Restoration Project and Chumash Discovery Center, together with comments received during the public review process; find that the project will not have a significant effect on the environment; find that the Negative Declaration reflects the independent judgment of the County; and approve the Negative Declaration.
2. Authorize the Director to issue a Right-of-Entry Permit (Permit) to the Wishtoyo Foundation to allow the Foundation access for ceremonial and site visitations, habitat restoration, construction and operation of a demonstration village, Indian studies, and an archaeological program.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The Wishtoyo Foundation (Wishtoyo), in cooperation with the Department of Beaches and Harbors, proposes to create a Chumash Discovery Center (Center) on County-owned land on the bluff above Nicholas Canyon Beach in Malibu and restore native vegetation along a portion of Nicholas Canyon Creek. Wishtoyo is a nonprofit organization that utilizes traditional Chumash cultural practices to foster environmental education and awareness. The Center will consist of a demonstration village, using traditional methods and materials, and will be an educational tool to teach visitors about the local Native American culture in the area around Nicholas Canyon Creek, where

The Honorable Board of Supervisors
October 5, 2004
Page 2

archaeologists have recorded over 5,000 years of habitation by the Chumash Native Americans. The goal of the Center is to demonstrate the Native American people's reliance on and respect for the environment through re-enactments of daily life and special ceremonies in a typical Chumash village. Restoration of the native vegetation along Nicholas Canyon Creek will tie into the Center's tours and provide hands-on site restoration and education associated with the general watershed and creek areas.

In order to develop the Center, approval by your Board of the attached Negative Declaration for the Nicholas Canyon Creek Restoration Project and Chumash Discovery Center (Negative Declaration) is required so as to comply with the California Environmental Quality Act ("CEQA").

Implementation of Strategic Plan Goals

The approval of the Negative Declaration provides the required environmental review under CEQA for the project and allows Wishtoyo to move forward with receipt of various private and state grant funds to pursue this environmental and educational project, thereby furthering the Strategic Plan goal of Fiscal Responsibility, and providing the public with access to a quality recreational resource, furthering the goal of Service Excellence.

FISCAL IMPACT/FINANCING

Approval of the Negative Declaration will have no fiscal impact on the County's operations. The project is being funded entirely by public and private grants issued to Wishtoyo. Specifically, Wishtoyo received a Proposition 12 grant in the amount of \$188,250 from the Santa Monica Bay Restoration Commission to fund the Nicholas Canyon Creek habitat restoration. The contract for this grant will be finalized upon receipt of a certified CEQA document and required permits. Two grants from the Annenberg Foundation and the Homeland Foundation will provide \$75,000 for the first year of the village site restoration and operational activities. Wishtoyo anticipates that the additional \$200,000 needed for five years of village operation will be raised from future contributions and grants from a variety of foundations and agencies including, the Annenberg Foundation, the Homeland Foundation, the Native American Heritage Foundation, the California Coastal Conservancy, the Santa Monica Mountains Conservancy, Environment Now, Creative Artists Agency Foundation, and cultural funds from Proposition 40.

The project is anticipated to generate additional parking revenue at the Nicholas Canyon County Beach parking lot, which will be used by an increased number of visitors to the Center. The Department anticipates approximately 3,000 additional

visitors to this facility per year, arriving both by school bus and private vehicle, generating approximately \$5,200 in additional parking revenue.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

The Nicolas Canyon Creek and Chumash Discovery Center project will include the removal of non-native plant species and the planting of native plant species, along both Nicholas Canyon Creek and the Center site. All areas where activity will occur will be covered with clean fill soil to protect potential archaeological resources on the site. A 10 foot by 13 foot portable trailer, serving as a temporary visitor's center and staff office, and chemical toilets will be placed near the entrance to the Center. The demonstration village itself will consist of replicas of a Chumash housing unit/grass hut, a ceremonial/dance ground, and canoes. All structures will be made entirely of natural materials and rest on top of the land. Clothing, food and handicrafts displayed at the village, as well as the dances and ceremonies performed, will be replicas of originals used and performed by the Chumash in an early 1800's village. As shown in the attached Initial Study, this project will have no significant impact on the environment.

The Department of Beaches and Harbors has previously issued a Right-of-Entry Permit to Wishtoyo for access and ceremonial and site visitation purposes. The Department will issue a new Right-of-Entry Permit to expand the purpose of the original permit to include the Restoration Project and the operation of the Discovery Center. The new permit is for a term of 5 years and will expire on September 30, 2009. A copy of the permit is attached as Attachment B. Wishtoyo will be charged a permit fee of \$100 per year. There will be no special parking privileges granted to Wishtoyo, however staff and guests will be able to park in the Nicholas Canyon County Beach public parking lot upon payment of regular rates.

This Board letter was considered by the Beach Commission at its September 15 meeting, at which time the Commission approved the Director's recommendations.

ENVIRONMENTAL DOCUMENTATION

As required by CEQA, a draft Negative Declaration was prepared for this project and circulated for agency and public review May 11, 2004. The review period ended on June 10, 2004. No substantive comments warranting a response were received during the review for the Negative Declaration.

One letter in response to the draft Negative Declaration was received on June 15, 2004 from Mr. Jeff Greene, the closest neighbor to the site. Mr. Greene was primarily concerned with the security of his property and the level of noise generated by visitors and Center activities. The Department responded on June 28, 2004 with a letter that

The Honorable Board of Supervisors
October 5, 2004
Page 4

explained how parking and control of visitors to the site would occur, that no power tools would be used in the creation of the demonstration village, and the security measures in place at the site. A copy of the letters are attached as Attachment C.

Following approval of the Negative Declaration by your Board, a Notice of Determination will be filed with the County Clerk in accordance with State law.

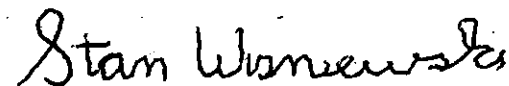
IMPACT ON CURRENT SERVICES (OR PROJECTS)

The Nicholas Canyon Creek Restoration Project and the Chumash Discovery Center will provide a unique environmental and education resource on an underutilized portion of County land.

CONCLUSION

Please return one approved copy of this letter to the Department of Beaches and Harbors.

Respectfully submitted,



Stan Wisniewski
Director

Attachments (3)

c: Chief Administrative Officer
County Counsel
Executive Officer, Board of Supervisors



LOS ANGELES COUNTY DEPARTMENT OF BEACHES AND HARBORS
13837 Fiji Way, Marina del Rey, California 90292

PERMIT NO. 04-020

Effective date: 08/01/05

Expiration date: 07/31/10

BEACH/FACILITY (Premises): Nicholas Canyon

PERMITTEE:

Wishtoyo Foundation
3600 South Harbor Blvd.
Suite 222
Oxnard, CA 93035

CONTACT:

Lin Myerson, Projects Administrator
Phone #: (805) 382-4540
Fax #: (805) 382-4541
E-mail: lin@wishtoyo.org

PURPOSE OF PERMIT: Ceremonial and site visitations, habitat restoration, construction and operation of a demonstration village, Indian studies, and an archaeological program as set forth in the attached site plan (Exhibit A).

EQUIPMENT TO BE USED: N/A

STAGING AREA: N/A

APPLICATION DATE: _____

ISSUE DATE: 7-26-05

PROCESSING FEE: 0

DEPOSIT: 0

YEARLY RENT: \$100

TOTAL DUE: 0

RECEIPT NO. 3552

Stan Wisniewski
Director, Department of Beaches and Harbors

**THIS PERMIT IS SUBJECT TO THE TERMS AND CONDITIONS LISTED BELOW
AND TO THE PROVISIONS LISTED UNDER THE "GENERAL PROVISIONS" SECTION HEREIN**

1. Permittee shall pay rent in the amount of \$100 per year on or before each anniversary of the Effective Date, for the duration of this Permit in consideration for the privileges granted herein.
2. Permittee, in an effort to help prevent beach erosion, shall not allow any groups organized by the Permittee onto the beach.
3. Permittee, at the expiration or termination of the Permit, shall restore the Premises to the same condition it was at the time Permittee first entered the Premises.
4. Permittee is responsible for any and all damage done to the Premises by Permittee, agents, contractors, subcontractors, invitees, visitors and anyone holding under the Permittee. Permittee shall promptly repair any such damage as soon as Permittee is aware of the damage but not later than 10 days upon receipt of notification from the County.

PERMIT NO. 04-020

5. This Permit does not grant any special parking privileges unto Permittee. Permittee shall pay the posted parking lot entry fee for each vehicle upon entry into the lot, and shall obey all posted parking lot rules and regulations.
6. Permittee shall be responsible for the maintenance of, the cleaning of, and the graffiti removal from the portable trailer, the portable restrooms, and any other improvements placed on the Premises. All portable restrooms shall be secured to the ground to prevent the restrooms from being knocked down or turned over.
7. Permittee is advised that subject work may require a permit from the United States Army Corps of Engineers, the California Coastal Commission, the California Department of Fish and Game, the State Water Resource Quality Control Board, the United States Department of Fish and Wildlife Service, and/or the City of Malibu. Permittee shall obtain all required permits from any governmental body prior to commencing work.
8. Permittee agrees to keep and perform all provisions contained in any permit issued or to be issued to Permittee by any governmental agency or commission.
9. Permittee agrees to keep all advertising signs and marketing material off the Premises. Permittee will be allowed to place informational signs on the Premises for the purposes of the permitted activities. Permittee shall obtain prior written approval of the Director of the Department of Beaches and Harbors for those informational signs.
10. Permittee agrees to conduct the permitted activities in a courteous and non-profane manner, to operate without interfering with the use of the Premises by the County or the public, except as herein permitted, and to remove any agent, servant or employee who fails to conduct permitted activities in the manner heretofore described.
11. Permittee acknowledges that this Permit is issued by County of Los Angeles to Permittee for the intended activities and is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between County and Permittee. It is expressly understood by Permittee that in permitting the right to use the Premises, no estate or interest in real property is being conveyed to Permittee, and that the right to use is only a nonexclusive, revocable and unassignable permission to occupy the Premises in accordance with the terms and conditions of the Permit for the purpose of conducting the permitted activities.
12. Permittee shall not commence any construction, improvements, or alterations to the Premises before submitting a site plan and/or construction plan to the Department of Beaches and Harbors for approval, and before receiving approval from the Department of Beaches and Harbors.

13. GENERAL PROVISIONS

- A. Permittee has examined the Premises and knows the conditions thereof. Permittee accepts the Premises in the present state and condition and waives any and all demand upon County for alteration, repair, or improvement thereof. Permittee shall make no alteration or improvements to the Premises without prior written approval from the County. Permittee shall arrange for and bear the cost of any other permits required by Federal, State or local law, site preparation, installation of utilities, treatment of surface, enclosure of Premises, insurance premiums, utility bills, and other costs of any nature whatsoever, which are necessary in connection with or appurtenant to the operation and maintenance of Premises as used by the Permittee. County will allow no credit for the cost of any such expenditure or work performed or ordered by Permittee.
- B. Permittee may terminate this Permit at anytime by giving County no less than thirty (30) days' advance written notice of intention to terminate. However, the termination shall not be effective unless Permittee has complied with all of the following:
 - Vacated the Premises.
 - Removed all improvements Permittee has constructed or placed upon the Premises, if applicable.

PERMIT NO. 04-020

- Restored the Premises to as good a condition as existed on the day possession of Premises was taken by Permittee, allowing for the ordinary wear and tear associated with the normal usage during occupancy, and reimbursed the County for any damage done to the Premises.
- C. County may terminate this Permit at any time by giving Permittee no less than ninety (90) days' advance written notice of intention to terminate. Upon receipt of such notice, Permittee shall vacate the Premises as required herein. Permittee agrees that should it fail to vacate as herein provided, the County or its authorized agents may enter upon said Premises and remove Permittee's personal property therefrom, and in this event, Permittee waives any and all claims for damages against the County, its officers, agents, or employees. Permittee shall reimburse County for all expenses incurred by County plus maximum interest allowed by law accruing from the day County incurred the expenses until such time as the principal and interest are fully paid by Permittee. Nothing herein shall be deemed a waiver of any rights of the County to demand and obtain permission of the Premises in accordance with law in the event Permittee violates any part of any of the terms or conditions herein.
- D. It is understood and agreed to be part of the herein consideration that County may temporarily suspend or terminate the Permit without notice to Permittee in order to allow the performance by County, its officers, agents, and employees, of work necessary to protect persons or property, including the Premises, from impending danger, hazard or harm.
- E. Permittee shall keep Premises and any improvements it constructed or placed on Premises in good working order and maintain such in a neat, clean, and orderly condition at all times during occupancy and not permit graffiti, rubbish, tin cans, garbage, etc., to accumulate, nor to use or allow use of Premises for any illegal or unauthorized purposes, and to comply with all State laws and local ordinances concerning Premises and the use thereof.
- F. It is understood and agreed that County shall not be responsible for any damage to Premises or injuries to persons which may arise from or be incidental to the use and occupancy of Premises, or for damages to the property of Permittee, or for injuries to the person of Permittee, Permittee's agents, servants, successors, subtenants, invitees or others who may be on Premises at anyone's invitation, arising from or incidental to the use of Premises by the Permittee or anyone under the Permittee or County, and/or its agents, contractors, employees or assigns. Permittee agrees to indemnify, defend, and hold the County, its elected officials, officers, employees and agents, harmless from any and all such claims, including defense costs and legal fees.
- G. This Permit shall cancel and terminate any prior oral or written agreement, if any, between County and Permittee for use of the Premises, as of the commencement date of this Permit.
- H. This Permit may create a possessory interest upon which a property tax may be levied. In such event, Permittee shall pay before delinquency all such taxes or assessments.
- I. Without limiting Permittee's indemnification of the County, Permittee shall at its own expense take out and maintain in force, at all times during the term of this Permit, a policy or policies of insurance covering Premises. Such insurance shall be provided by insurer(s) satisfactory to the County Risk Manager. At a minimum, the policy shall meet the following minimum criteria:
- Coverage for comprehensive general liability and property damage in the amount not less than One Million Dollars (\$1,000,000) per occurrence, Two Million Dollars (\$2,000,000) aggregate.
 - Coverage for automobile liability in the amount not less than One Million Dollars (\$1,000,000) per occurrence.
 - The COUNTY OF LOS ANGELES, its governing board, officers, and employees shall be named as Additional Insured on all policies of liability insurance to be evidenced by an endorsement or similar

PERMIT NO. 04-020

instrument. (If County is not named as an Additional Insured in the original policy, an endorsement will be necessary to satisfy this provision.)

- This Permit No. 04-020 is included as part of the insured premises to be evidenced by an endorsement or a similar instrument. (If the Premises or this Permit are not named as an Additional Insured in the original policy, an endorsement will be necessary to satisfy this provision.)
- Coverage for Workers' Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California and which specifically covers the persons and risks involved in this Permit. Permittee understands and agrees that all persons furnishing services to the County pursuant to this Permit are, for purposes of Workers' Compensation liability, employees solely of Permittee and not of County. Permittee shall bear the sole responsibility and liability for furnishing Workers' Compensation benefits to any person for injuries arising from or connected with services performed on behalf of Permittee pursuant to this Permit.

All policies of insurance shall be with a company or companies authorized by law to transact insurance business in the State of California. Prior to the commencement date of this Permit, Permittee shall furnish to County a copy of the policy of insurance evidencing Permittee's insurance coverage. Failure on the part of Permittee to procure or maintain required insurance shall constitute a material breach of contract upon which the County may immediately terminate this Permit.

Upon renewal of any of the policies of insurance, Permittee shall furnish to County a Certificate of Insurance evidencing Permittee's continued insurance coverage. The County shall be given notice in writing at least (30) days in advance of cancellation or modification of such policy.

In the event any of the policies are changed or if the insurance carrier is changed, Permittee shall provide County a copy of the replacement policy meeting the minimum requirements as above noted.

- J. Permittee expressly acknowledges that Permittee is a post acquisition tenant and shall not be entitled to any claim of status as a "displaced person" as such is defined in Section 7260 of the Government Code of the State of California. Permittee hereby acknowledges Permittee's ineligibility for relocation assistance as provided in Government Code Sections 7260 through 7277, inclusive, as it exists or as it may be amended.
- K. Permittee shall not commence nor permit any construction or the placement of any improvements or other structures on or within the Premises without first submitting plans and specifications for advance written approvals by the County's Department of Public Works, Building and Safety Division.
- L. County may, at its sole discretion, enter Premises to conduct Environmental Site Assessments. Upon review of such Assessments, County may, at its sole discretion, terminate this Permit consistent with General Provision C. Permittee shall bear any and all responsibility, expense, and liability incurred in the cleanup and treatment of any hazardous materials or condition found on the Premises caused by Permittee's use, storage, or treatment of any hazardous materials on/or within the Premises.
- M. Each County Lobbyist as defined in Los Angeles County Code Section 2.160.010, retained by Permittee, shall fully comply with the County Lobbyist Ordinance, Los Angeles County Code Chapter 2.160. Failure on the part of any Lobbyist retained by Permittee to fully comply with the County Lobbyist Ordinance, shall constitute a material breach of this Permit upon which the County may terminate or suspend this Agreement.

PERMIT NO. 04-020

ACCEPTANCE

We, the undersigned Permittee, have read, understood and agreed to all the terms, conditions, and restrictions contained in this Permit.

PERMITTEE:

WISHTOYO FOUNDATION

Signature: *Mati Maiva*

Name in Print: MATI MAIVA

Title: Executive Director

Date: 7-26-05

EXHIBIT C

CITY OF MALIBU PLANNING COMMISSION RESOLUTION NO. 05-08

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF MALIBU APPROVING COASTAL DEVELOPMENT PERMIT NO. 04-035 TO ALLOW FOR DEVELOPMENT OF THE SAN NICHOLAS CANYON CREEK CHUMASH DISCOVERY CENTER AND CREEK RESTORATION IN THE PUBLIC OPEN SPACE (POS) ZONING DISTRICT LOCATED AT 33904 PACIFIC COAST HIGHWAY (LOS ANGELES COUNTY DEPARTMENT OF BEACHES AND HARBORS)

THE PLANNING COMMISSION OF THE CITY OF MALIBU DOES HEREBY FIND, ORDER AND RESOLVE AS FOLLOWS:

Section 1. Recitals.

A. On February 25, 2004, City staff met with representatives from the Los Angeles County Department of Beaches and Harbors and representatives from the Wishtoyo Foundation to discuss the proposed project and determine if the City of Malibu had local permit jurisdiction over the development of the proposed project. At the conclusion of this meeting, Los Angeles County submitted a pre-application request for the determination of local permit jurisdiction for the proposed project. The project proposes the development of a Chumash cultural demonstration village, which will include traditional and portable housing structures ('Aps), a ceremonial circle and fire pit, a traditional canoe workshop and learning area, a portable office trailer, and one port-a-potty. The restoration of San Nicholas Canyon Creek is another component of the project. The proposed project is located at 33904 Pacific Coast Highway in the POS Zoning District.

B. On April 26, 2004, City staff made the determination that the City of Malibu had no local permit jurisdiction over the proposed project based on the understanding that Los Angeles County, as the property owner, was working in conjunction with the Wishtoyo Foundation, as the applicant, to develop the proposed project. The project is proposed at the Nicholas Canyon County Beach and has been determined to be within the jurisdiction of Los Angeles County and, therefore, exempt from review for compliance with the Malibu Municipal Code.

C. On October 4, 2004, an application for Coastal Development Permit ("CDP") No. 04-035 was submitted by the Wishtoyo Foundation, on behalf of the Los Angeles County Beaches and Harbors, to the Planning Division for the proposed development of the San Nicholas Canyon Creek Chumash Discovery Center and Creek Restoration.

D. On January 3, 2005 the City Biologist determined the proposed project would require review by the Environmental Review Board ("ERB") as a result of potential impacts to special-status biological resources.

E. On January 12, 2005 a Notice of Coastal Development was posted on the subject property.

F. On March 10, 2005 the ERB reviewed the proposed project and provided a recommendation for the Planning Commission's consideration.

G. On March 14, 2005, the application was deemed complete for processing.

H. On April 7, 2005, a Notice of Public Hearing was published in a newspaper of general circulation within the City of Malibu. In addition, on April 7, 2005 a Notice of Public Hearing was mailed to all property owners and occupants within a 500-foot radius of the subject property.

I. On April 18, 2005, the Planning Commission held a duly noticed public hearing on the subject application, reviewed and considered the staff report, reviewed and considered written reports, public testimony, and other information in the record.

Section 2. Environmental Review.

Pursuant to the authority and criteria contained in the California Environmental Quality Act ("CEQA"), the Planning Commission has analyzed the proposal as described above. Pursuant to CEQA Guidelines Section 15051(c), an initial study and negative declaration were prepared by the lead agency, Los Angeles County Department of Beaches and Harbors, in March 2004. Moreover, pursuant to CEQA Guidelines Sections 15096 (c) and (d), City Staff, as the responsible agency, met with representatives of Los Angeles County to discuss the proposed project. Consistent with CEQA Guidelines Sections 15096(d), City Staff reviewed and commented on the draft environmental document. The environmental document (SCH No. 20040510654) was circulated for public review and was adopted by the Los Angeles County Board of Supervisors on October 5, 2004.

The negative declaration prepared by the lead agency concluded that there is no substantial evidence that the project, as proposed, will have a significant effect on the environment. The City has considered the negative declaration prepared by the lead agency. Accordingly, a NOTICE OF DETERMINATION pursuant to CEQA Guidelines Section 15096(i) will be filed.

Section 3. Coastal Development Permit Approval and Findings.

Based on substantial evidence contained within the record and pursuant to Sections 13.7.B and 13.9 of the City Malibu LCP Local Implementation Plan, the Planning Commission hereby adopts the findings in the staff report and makes the following findings of fact and approves Coastal Development Permit No. 04-035.

A. General Coastal Development Permit (LIP – Chapter 13)

Finding A. That the project as described in the application and accompanying materials, as modified by any conditions of approval, conforms with the certified City of Malibu Local Coastal Program.

~~There is no component of the proposed project that will result in the development's fixed location to the ground. The project does not propose the construction of any new development square footage, impermeable coverage, grading, fences, or walls.~~ Thus, the project, as conditioned, conforms to the certified City of Malibu Local Coastal Program (LCP) in that it meets the required development

standards.

Finding B. If the project is located between the first public road and the sea, that the project conforms to the public access and recreation policies of Chapter 3 of the Coastal Act of 1976 (commencing with Sections 30200 of the Public Resources Code).

The project is located between the first public road and the sea. The project is proposed at the Nicholas Canyon County Beach where public parking for approximately 149 vehicles and coastal access are currently provided. The proposed project will not compromise the public's right of access. The location of the proposed project and related development and restoration activities is not anticipated to interfere with the public's right to access the coast because the project, as proposed, does not block or impede the ability to use the vertical access from the public parking lot.

Finding C. The project is the least environmentally damaging alternative.

Pursuant to CEQA, this project has been analyzed through the preparation of an initial study and negative declaration. Based on the evaluation contained in the environmental document it has been determined that the project could not have a significant effect on the environment.

There are two alternatives that were considered to determine the least environmentally damaging.

1. No Project – The no project alternative would potentially result in adverse impacts to archaeological resources and the riparian habitat. The project site contains significant archaeological resources where, in the absence of the proposed project, may be susceptible to gopher disturbance and other causes of bioturbation as well as the lack of preservation of the current arrangement of objects than would be preserved under current conditions. (King 2001) Moreover, the "no project" alternative would result in a potentially adverse environmental impact to the riparian habitat as a result of the invasive, non-native plant species' continued encroachment on the native plant species found within the project site.

2. Proposed Project – The subject site contains significant archaeological resources pursuant to CEQA as well as riparian habitat, which is threatened by the continued encroachment of invasive, non-native plant species. The development of the proposed project would result in protection of the archaeological resources with the placement of clean fill soil and/or sand prior to visitors entering the site. The placement of clean fill soil and/or sand would reduce the potential for gopher disturbance and other causes of bioturbation as well as an increased preservation of the current arrangement of objects than would be preserved under current conditions.

The City Biologist has determined that the proposed project will not result in an adverse impact to the ESHA because the project ~~will not employ the use of invasive, permanent construction methods such as grading or the construction of concrete foundations.~~ The creek restoration component of the proposed project will result in the overall improvement of the quality of the riparian habitat. The creek restoration activities include the removal of invasive, non-native plant species, the planting of appropriate native species, the implementation of best management practices ("BMP's") to control the spread of invasive species, the development of an irrigation plan for the native plant restoration, the careful removal of concrete structures from the top of the

creek bank, and the monitoring of native plant survival

Staff has reviewed the "no project" alternative for the proposed project in addition to the analysis contained in the initial study and negative declaration prepared and adopted by Los Angeles County, and therefore, the project as proposed has been determined to be consistent with CEQA. The proposed project would not result in significant adverse effects on the environment, within the meaning of CEQA and there are no other feasible project alternatives that would further reduce any significant impacts on the environment. The project complies with the size and height requirements of the LCP. The proposed San Nicholas Canyon Chumash Discovery Center and Creek Restoration is consistent with the Public Open Space zoning classification of the subject property. The project will not result in potentially significant impacts on the physical environment.

Finding D. If the project is located in or adjacent to an environmentally sensitive habitat area pursuant to Chapter 4 of the Malibu LIP (ESHA Overlay), that the project conforms with the recommendations of the Environmental Review Board, or if it does not conform with the recommendations, findings explaining why it is not feasible to take the recommended action.

The subject parcel is located in the ESHA Overlay Area of the Malibu Local Coastal Program LIP. Pursuant to LIP Section 4.3.B. "unless there is site specific evidence that establishes otherwise, the following habitat areas are considered to be ESHA: 1. Any habitat area that is rare or especially valuable from a local, regional, or statewide basis; 2. Any habitat area that contributes to the viability of plant or animal species that are designated or are candidates for listing as rare, threatened, or endangered under State or Federal law; 3. Any habitat area that contributes to the viability of species that are designated "fully protected" or "species of special concern" under State law or regulations; 4. Any habitat area that contributes to the viability of species for which there is other compelling evidence of rarity, for example plant species eligible for state listing as demonstrated by their designation as "1B" (Rare or endangered in California and elsewhere) or designated as "2" (rare, threatened, or endangered in California but more common elsewhere) by the California Native Plant Society; and 5. Any designated Area of Special Biologist Significance, or Marine Protected Area."

In this case, the City Biologist has made the determination, based on a site visit and the independent biological study prepared for the project, that the project site contains special-status biological resources and a jurisdictional drainage and does meet the criteria for ESHA. Pursuant to LUP Policy 3.3 "All Areas of Special Biological Significance and Marine Protected Areas (as designated by the California Department of Fish and Game), shall be considered ESHA and shall be accorded all protection provided for ESHA in the LCP." Pursuant to LIP Section 4.5.3, the following types of development are permitted in the ESHA: "A. Public accessways and trails; C. Restoration projects where the primary purpose is restoration of the habitat; and D. Invasive plant eradication projects if they are designed to protect and enhance habitat values." Moreover, as discussed earlier, the City Biologist has determined that the development of the simulation village will not result in an adverse impact to the ESHA because the project will not employ the use of invasive, permanent construction methods such as grading or the construction of concrete foundations.

Pursuant to LIP Section 4.3(D), the City Biologist and the Environmental Review Board (ERB) shall review proposed projects within the ESHA Overlay. As detailed in the staff report, this project was

reviewed by the ERB on March 10, 2005 and the project conforms to the recommendations of the Board. Accordingly, this project complies with the criteria established in the LCP.

B. Environmentally Sensitive Habitat Area (LIP - Chapter 4)

The Environmentally Sensitive Habitat Area (ESHA) Overlay provisions apply to Coastal Development Permit applications when the proposed project site is designated environmentally sensitive habitat area on the Malibu LIP ESHA Overlay map in addition to those areas within 200 feet of a designated ESHA. This project is proposed within the ESHA Overlay; therefore, the provisions of the Environmentally Sensitive Habitat Area Overlay apply and the three findings set forth in LIP Section 4.7.6 are hereby made as follows:

Finding A. The application of the ESHA overlay ordinance would not allow construction of a residence on an undeveloped parcel.

The zoning classification for the project site is Public Open Space and does not permit residential uses. Therefore, this finding does not apply.

Finding B. The use proposed by the applicant is consistent with the applicable zoning.

The zoning classification for the project site is Public Open Space. The uses proposed by the applicant include educational (non-profit) activities and the restoration of the San Nicholas Canyon Creek. Pursuant to the Permitted Uses Table in the LIP, the uses proposed by the applicant are consistent with the zoning classification.

Finding C. The project is consistent with all provisions of the certified LCP with the exception of the ESHA Overlay ordinance and it complies with the provisions of Section 4.7 of the Malibu LIP.

As discussed in A. General Coastal development Permit, Finding D, and as detailed in the accompanying staff report, this project conforms to the recommendations of the ERB and, therefore, complies with the criteria established in the LCP.

C. Native Tree Protection Ordinance– (LIP - Chapter 5)

The provisions of the Native Tree Protection Ordinance only apply to those areas containing one or more native Oak, California Walnut, Western Sycamore, Alder or Toyon tree, that has at least one trunk measuring six inches or more in diameter, or a combination of any two trunks measuring a total of eight inches or more in diameter, 4 ½ feet from the ground. According to the Biological Assessment prepared by Bioregional Planning Associates in October 2003, there are several native tree species present on the property. The report identified Toyons, Sycamores, and Oaks as the sensitive native tree species observed on the property. Accordingly, the provisions of the Native Tree Protection Ordinance apply and the three findings set forth in LIP Section 5.7 are hereby made as follows:

Finding A. The proposed project is sited and designed to minimize removal of or encroachment in the protected zone of native trees to the maximum extent feasible.

A large portion of the project proposes the restoration of native plant species on the site and the removal of invasive, non-native plant species. The development of the San Nicholas Canyon Chumash Village would not disturb any native plant species and no native trees would be removed. The proposed 'Aps and other Chumash replicas would be constructed from native plant materials and would not be permanent on the site. Therefore, no adverse impacts on native trees are expected.

Finding B. The adverse impact to native tree removal and/or encroachment cannot be avoided because there is no other feasible alternative.

As discussed previously, a large portion of the project proposes the restoration of native plant species on the site and the removal of invasive, non-native plant species. The development of the San Nicholas Canyon Chumash Village would not disturb any native plant species and no native trees would be removed. The proposed 'Aps and other Chumash replicas would be constructed from native plant materials and would not be permanent on the site. Therefore, no adverse impacts on native trees are expected.

Finding C. All feasible mitigation measures that would substantially lessen any significant impact on native trees have been incorporated into the approved project through design or conditions of approval.

As discussed previously, a large portion of the project proposes the restoration of native plant species on the site and the removal of invasive, non-native plant species. The development of the San Nicholas Canyon Chumash Discovery Center would not disturb any native plant species and no native trees would be removed. The proposed 'Aps and other Chumash replicas would be constructed from native plant materials and would not be permanent on the site. Therefore, no adverse impacts on native trees are expected.

D. Scenic, Visual and Hillside Resource Protection Ordinance (LIP - Chapter 6)

The Scenic, Visual and Hillside Resource Protection Ordinance governs those Coastal Development Permit applications concerning any parcel of land that is located along, within, provides views to or is visible from any scenic area, scenic road, or public viewing area. This project is proposed on a scenic road (Pacific Coast Highway) and contains a public viewing area (parking lot for Nicholas Canyon County Beach); therefore, the Scenic, Visual and Hillside Resource Protection Ordinance applies and the five findings set forth in LIP Section 6.4 are hereby made as follows:

Finding 1. The project, as proposed, will have no significant adverse scenic or visual impacts due to project design, location on the site or other reasons.

The subject site, along the Pacific Coast Highway, is visible from this corridor. There is, however, existing landscaping which heavily screens the project site. The components of the San Nicholas Canyon Chumash Village will be made from natural materials, which would result in the Village and its associated development blending in with the existing natural setting. The project does, however, include the placement of a portable office trailer on site, which is visible from the public beach parking lot. The siting of the trailer has been determined to result in a less than significant visual impact to public views as a result of the existing landscaping reducing the trailer's visibility from the public viewing area from within the public parking lot.

Staff conducted site visits on February 7, 2005 and March 10, 2005. New story poles had been erected, as required with the CDP application, which allowed for a careful review and analysis of the visual impact from public viewing areas along PCH and the public viewing area within the public parking lot. The story poles represented the siting of the 'Aps and the portable trailer proposed on the eastern side of the property. Based on staff's site reconnaissance, photos, and review of the project plans, the Planning Commission finds that the San Nicholas Canyon Chumash Discovery Center would result in a less than significant visual impact to public views to and along the coast and from public roads and trails. The subject property is less visually intrusive than any of the surrounding development to the east and northwest of the project site.

Finding 2. The project, as conditioned, will not have significant adverse scenic or visual impacts due to required project modifications, landscaping or other conditions.

As previously discussed, existing landscaping heavily screens the project site. The proposed Chumash Village is, however, visible from the public viewing area from the Nicholas Canyon County Beach parking lot. ~~The components of the Village, except for the portable office trailer, will be constructed from natural materials, thus blending in with the existing natural setting.~~ The project has been determined to result in less than significant visual impacts views as a result of the existing landscaping reducing the trailer's visibility from the public viewing area in the public parking lot.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed in A. General Coastal Development Permit, Finding C. the project as proposed or as conditioned, is the least environmentally damaging alternative.

Finding 4. There are no feasible alternatives to development that would avoid or substantially lessen any significant adverse impacts on scenic and visual resources.

As discussed in D. Scenic Visual and Hillside Resource Protection, Finding 1, the proposed location of the development will result in no significant impacts on scenic and visual resources.

Finding 5. Development in a specific location on the site may have adverse scenic and visual impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified LCP.

As discussed in D. Scenic Visual and Hillside Resource Protection, Finding 1, the proposed location of the development will result in no significant impacts on scenic and visual resources.

E. Transfer Development Credits (LIP – Chapter 7)

Pursuant to section 7.2 of the LIP, the regulations requiring a transfer development credit apply to any action to authorize a coastal development permit for a land division. The proposed coastal development permit does not involve a land division. Therefore, Chapter 7 of the LIP does not apply to this application.

F. Hazards (LIP - Chapter 9)

The project was analyzed by the Planning Commission for the hazards listed in the Local Implementation Plan Section 9.2.A.1-7. Analysis of the project for hazards included review of the City of Malibu General Plan, review of the hazards designation in the City of Malibu's Geographic Information System (GIS) computer mapping system, the environmental document prepared by Los Angeles County, the project description and site plan. The General Plan shows that the project site is not in the vicinity of the Malibu Coast Fault. The General Plan also shows the project site is in the vicinity of extreme fire hazards areas. The City's GIS computer mapping system indicates the project site's location within the seismic landslide and liquefaction hazard areas as well as the 100-year FEMA Flood zone.

Finding 1. The project, as proposed will neither be subject to nor increase instability of the site or structural integrity from geologic, flood, or fire hazards due to project design, location on the site or other reasons.

The proposed site was analyzed for geologic and structural integrity hazards. Based on the project description including the temporary placement of inhabitable, portable 'Aps made from willow, the restoration of San Nicholas Canyon Creek, and the removal of concrete structures from the top of the creek bank, the City Geologist determined that the project is not subject to nor increase instability of the site or structural integrity from hazards. (Attachment 15, Memo from City Geologist.) The proposed site was also evaluated for flood hazards but since it is sufficiently above the shoreline [approximate elevation 90 feet above the mean sea level (MSL)], such that the risk of inundation due to a tsunami is minimal. The entire City of Malibu is located within the fire hazard zone so no other alternatives were considered.

Finding 2. The project, as conditioned, will not have significant adverse impacts on site stability or structural integrity from geologic, flood or fire hazards due to required project modifications, landscaping or other conditions.

As stated in Finding 1 above, that although the City's GIS computer mapping system indicates the project site's location within the seismic landslide and liquefaction hazard areas as well as the 100-year FEMA Flood zone, based on the project description including the temporary placement of inhabitable, portable 'Aps made from willow, the restoration of San Nicholas Canyon Creek, and the removal of concrete structures from the top of the creek bank, the City Geologist determined that the project is not subject to nor increase instability of the site or structural integrity from hazards. The project has been approved by the City Geologist, City Public Works Department and the Los Angeles County Fire Department and the various departments conditioned the project to ensure that it will not have any significant adverse impacts on the site stability or structural integrity.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

As discussed previously, the project proposes the temporary placement of inhabitable, portable 'Aps made from willow, the restoration of San Nicholas Canyon Creek, and the removal of concrete structures from the top of the creek bank. Therefore, the project is not expected to have any significant adverse impacts on the site stability or structural integrity.

Finding 4. There are no alternatives to development that would avoid or substantially lessen impacts on site stability or structural integrity.

As discussed previously, the project proposes the temporary placement of inhabitable, portable 'Aps made from willow, the restoration of San Nicholas Canyon Creek, and the removal of concrete structures from the top of the creek bank. Therefore, the project is not expected to have any significant adverse impacts on the site stability or structural integrity.

Finding 5. Development in a specific location on the site may have adverse impacts but will eliminate, minimize or otherwise contribute to conformance to sensitive resource protection policies contained in the certified Malibu LCP.

As discussed previously, the project proposes the temporary placement of inhabitable, portable 'Aps made from willow, the restoration of San Nicholas Canyon Creek, and the removal of concrete structures from the top of the creek bank. Therefore, the development does not pose a threat of any adverse impacts. See Attachment 18 (Memo from City Geologist)

G. Shoreline and Bluff Development (LIP – Chapter 10)

The Shoreline and Bluff Development Ordinance applies to Coastal Development Permit applications when the proposed project site is located on or along the shoreline, a coastal bluff, or bluff-top fronting the shoreline. This project is proposed on a bluff-top and the five findings set forth in LIP Section 10.3 are hereby made as follows:

Finding 1. The project, as proposed, will have no significant adverse impacts on public access, shoreline sand supply or other resources due to project design, location on the site or other reasons.

The project is proposed at Nicholas Canyon County Beach, a public beach, which currently provides two sources of public vertical access to coastal resources from the public parking lot. Moreover, the project site has an existing access loop road (ranging between 4 to 5 feet in width), which provides critical linkage from the bluff top to the sources of vertical access at the public parking lot. Therefore, the Local Coastal Program requires no condition for additional public access.

The removal of concrete structures from the top of the creek bank may result in the overall increase of shoreline sand supply, thus complying with the standards contained in the LCP.

Finding 2. The project, as conditioned, will not have significant adverse impacts on public access, shoreline sand supply or other resources due to required project modifications or other conditions.

As stated in Finding 1, the project, as proposed, will not have significant adverse impacts on public access, shoreline sand supply or other resources and, thus, requires no modifications or additional conditions of approval.

Finding 3. The project, as proposed or as conditioned, is the least environmentally damaging alternative.

This finding was discussed earlier under the A. General Coastal Development Permit Section, Finding C.

Finding 4. There are no alternatives to the development that would avoid or substantially lessen impacts on public access, shoreline sand supply, or other resources.

As discussed in Finding 1, the project, as proposed, will not have significant adverse impacts on public access, shoreline sand supply or other resources and, thus, requires no modifications or additional conditions of approval.

Finding 5. If the development includes a shoreline protective device, that it is designed or conditioned to be sited as far landward as feasible, to eliminate or mitigate to the maximum feasible extent adverse impacts on local shoreline sand supply and public access, there are no alternatives that would avoid or lessen impacts on shoreline sand supply, public access or coastal resources and is the least environmentally damaging alternative.

The project, as proposed, does not include the installation of a shoreline protection device. Furthermore, as discussed in Finding 1, the project, as proposed, will not have significant adverse impacts on public access, shoreline sand supply or other resources and, thus, requires no modifications or additional conditions of approval.

H. Public Access (LIP - Chapter 12)

In accordance with Section 12.6.B.2. of the Malibu Local Implementation Plan, the project is exempt from providing public lateral, vertical, bluff top, trail or recreational access for the following reasons:

Lateral Access. The project is proposed at Nicholas Canyon County Beach, a public beach, where adequate lateral access is currently provided. Therefore, no condition for additional lateral access is required by the Local Coastal Program.

Vertical Access. The project is located between the shore and the first public road. The project is proposed at Nicholas Canyon County Beach, a public beach, which current provides vertical access to coastal resources from the public parking lot. The following findings and analysis were conducted in accordance with LIP Section 12.8.3 regarding vertical access:

- A. Vertical access would not impact fragile coastal resources, does not raise a significant public safety concern, or have any impact on a military facility.
- B. No mitigation measures to manage the type, character, intensity, hours, season or location of a vertical access is required to protect fragile coastal resources, public safety or military security, because no impacts have been identified.
- C. The ability of the public to access nearby public coastal tidelands is available from the Nicholas Canyon County Beach public parking lot on the west side of the project site. Moreover, there is existing directional signage on Pacific Coast Highway indicating the availability of coastal access from the Nicholas Canyon County Beach public parking lot. The project, as proposed, does not block or impede the use of either of the two sources of

vertical access. Conditioning the project to provide a vertical public access would not provide additional access to coastal resources, because the project is not located adjacent to any coastal resources or any planned access ways to coastal resources. Since no access to coastal resources would be obtained by imposition of the requirement for a vertical public access, no legitimate governmental or public interest would be furthered by such a requirement.

Therefore, due to the ability of the public, through another reasonable means, to reach nearby coastal resources and the fact that a vertical access on the project site would not provide additional access to coastal resources, an exception for public vertical access has been determined to be appropriate for the project and no condition for vertical access has been required in accordance with LIP Section 12.6.

Bluff Top Access. The project site has an existing access loop road (ranging between 4 to 5 feet in width), which provides critical linkage from the bluff top to the sources of vertical access at the public parking lot. Therefore, the Local Coastal Program requires no condition for bluff top access.

Trail Access. The project site does not include any existing or planned trails as indicated on the Trails Master Plan, and therefore no condition for trail access is required by the Local Coastal Program.

Recreational Access. The project site is currently provides an accessway to existing public recreational areas and therefore no condition for additional recreational access is required by the Local Coastal Program.

The subject parcel is located at the beach, but public access is not hindered. The subject site is located between the first public road and the sea but due to the location of the proposed development, the public's right of access to the sea is not compromised. In addition, the proposed project is not anticipated to interfere with the public's right to access the coast.

I. Land Division (LIP - Chapter 15)

This project does not involve a division of land as defined in LIP Section 15.1; therefore, Chapter 15 of the LCP does not apply.

Section 4. Conditions of Approval

Based on the foregoing findings and evidence contained within the record, the Planning Commission hereby approves Coastal Development Permit No. 04-035, subject to the conditions listed below:

Standard Conditions

1. The applicants and property owners, and their successors in interest, shall indemnify and defend the City of Malibu and its officers, employees and agents from and against all liability and costs relating to the City's actions concerning this project, including, without limitation, any award of litigation expenses in favor of any person or entity who seeks to challenge the validity of any of the City's actions or decisions in connection with this project. The City shall have the sole right to choose its counsel and property owners shall

reimburse the City's expenses incurred in its defense of any lawsuit challenging the City's actions concerning this project.

2. Approval of this application is to allow for the development of the San Nicholas Canyon Chumash Discovery Center and Creek Restoration. The development shall include:
 - Twelve traditional and portable 'Aps (houses), ranging between 15' – 25' across to 8' - 10' in height;
 - Traditional Siliyik (ceremonial circle and fire pit), 'Apa'yik (sweat lodge) and Ramada (shade porch);
 - Traditional Fish Drying Racks
 - Traditional Mortar Stones;
 - Traditional Demonstration Cemetery
 - One portable trailer (10' x 30'), and
 - One port-a-potty
3. Subsequent submittals for this project shall be in substantial compliance with the following plans: Site plan and Creek Restoration and Monitoring Plan dated October 4, 2004. In the event the project plans conflict with any condition of approval, the condition shall take precedence.
4. The permit and rights conferred in this approval shall not be effective and no building permits shall be issued until the applicant signs, has notarized the affidavit accepting the conditions set forth below. The applicant and/or property owner shall provide the City of Malibu Planning Division the notarized affidavit within 30 days of the Planning Commission's decision, no later than May 18, 2005.
5. Copies of this permit and all required permits and supporting documents shall be readily available at the project site at all times during period of public activities and active work.
6. The coastal development permit shall be null and void if the project has not commenced within two (2) years after issuance of the permit. Extension to the permit may be granted by the approving authority for due cause. Extensions shall be requested in writing by the applicant or authorized agent at least two weeks prior to expiration of the two-year period and shall set forth the reasons for the request.
7. Any questions of intent or interpretation of any condition of approval will be resolved by the Planning Division Manager upon written request of such interpretation.
8. All structures shall conform to the requirements of the City of Malibu Environmental and Building Safety Division, and to all City Geologist, City Environmental Health Specialist, City Biologist, and Los Angeles County Fire Department requirements, as applicable. Notwithstanding this review, all required permits shall be secured.
9. The applicant shall submit three complete sets of plans to the Planning Division for

consistency review and approval prior to the issuance of any building or development permit.

10. In the event that potentially important cultural resources are found in the course of the development of the project, work shall immediately cease until a qualified archaeologist can provide an evaluation of the nature and significance of the resources and until the Planning Division Manager can review this information. Thereafter, the procedures contained in Chapter 11 of the LCP and those in Section 17.54.040(D)(4)(b) of the City of Malibu Municipal Code shall be followed.
11. If human bone is discovered during the development of the project, work shall immediately cease and the procedures described in Section 7050.5 of the California Health and Safety Code shall be followed. Section 7050.5 requires notification of the coroner. If the coroner determines that the remains are those of a Native American, the applicant shall notify the Native American Heritage Commission by phone within 24 hours. Following notification of the Native American Heritage Commission, the procedures described in Section 5097.94 and Section 5097.98 of the California Public Resources Code shall be followed.
12. Minor changes to the approved plans or the conditions of approval may be approved by the Planning Division Manager, provided such changes achieve substantially the same results and the project is still in compliance with the Municipal Code and the Local Coastal Program. An application with all required materials and fees shall be required.
13. Violation of any of the conditions of this approval shall be cause for revocation and termination of all rights thereunder.
14. The Coastal Development Permit runs with the land and binds all future owners of the property.

Special Conditions

Biology/Landscaping

15. Vegetation shall be situated on the property so as not to obstruct significantly the primary view from private property at any time (given consideration of its future growth).
16. Ornamental non-native landscape species shall be prohibited within 50 feet of the jurisdictional drainage vegetation drip line.
17. Native species of the Santa Monica Mountains, characteristic of the local habitat, shall be used on graded slopes or where slope plantings are required for slope stabilization, erosion control, and watershed protection. Plants should be selected to have a variety of rooting depths. A spacing of 15 feet between large, woody shrubs is recommended by the Los Angeles County Fire Department. No lawns are permitted on slopes greater than 5 percent.

18. The list of plantings shall be amended to include purple needlegrass *Nassella pulchra* to exclude the use of century plant.
19. Slope planting measures such as contour planting and terracing or other techniques shall be incorporated on slopes to interrupt the flow and rate of surface runoff in order to prevent surface soil erosion.
20. The landscape plan shall prohibit the use of building materials treated with toxic compounds such as, but not limited to, copper arsenate.
21. To avoid the potential adverse impact to riparian areas with the use of vinegar and/or lemon juice as an herbicide, the Board recommending the use of herbicides that are approved for aquatic use as appropriate for the area being treated.
22. During the revegetation of native plant species, small container stock of new plantings shall be used.
23. All conditions required for Streambed Alteration Agreement No. 166-2004-0199-R5, issued by the State of California Department of Fish and Game on October 22, 2004, shall remain in effect.

Lighting

24. No exterior lighting is authorized under this approval.

Archaeological

25. Prior to the placement of clean fill soil and/or sand where public activities will occur, areas where public activities will be studied for the presence of cultural resources and mapped. Soil samples will be collected from the intersections of a grid with two (2) meter intervals, which will document the location of shell, carbon, and small artifacts. Upon the completion of soil sampling, material shall be placed over studied areas. The project will be conditioned to place material, possibly jute or coconut, prior to the placements of clean fill soil and/or sand.

Water Quality

26. During the removal of non-native vegetation and concrete structures from San Nicholas Canyon Creek, the applicant shall incorporate drainage and erosion control measures that incorporate non-structural Best Management Practices (BMPs) to control the volume, velocity and pollutant load of storm water runoff in compliance with all requirements contained in Chapter 17 of the Malibu LIP.

Noise

27. The noise intensity generated from activities on the project site shall at no time exceed 75 decibels (average radio level) as measured from the property line.
28. No amplified sound is authorized with this approval, unless permitted with the issuance of a Special Event Permit from the Los Angeles County Department of Beaches and Harbors.
29. The Planning Manager shall review this permit six months from the date of completion of the project to determine whether the conditions have been complied with and review the project as conditioned for compatibility with the neighborhood. If the Manager determines that the property owner is in violation of any conditions of approval or the conditions are inadequate to support the findings for approval set forth in this Resolution, the Manager shall cause a public hearing to be noticed for the Planning Commission to consider revocation or modification of the permit pursuant to procedures set forth in LIP Section 13.24. The Planning Commission may revoke or modify this permit if it finds that the property owner is in violation of any of the conditions of approval or if it finds that the conditions are inadequate to support the findings of approval set forth in this Resolution.

Revised Site Plan

30. **Prior to the issuance of the 5-year Right of Entry Permit from the Los Angeles County Department of Beaches and Harbors,** the applicant shall submit a revised site plan relocating the visitor serving entrance to the most southwest portion of the project site feasible. The portable office trailer and port-a-potty shall be relocated as far north as feasibly possible so as to not hinder handicapped access or the ability to maintain these components of the project. The service/handicapped entrance shall remain where it currently exists.

Portable Office Trailer

31. The portable office trailer shall not be used for human habitation.
32. The portable office trailer shall not include plumbing fixtures.

Annual Review

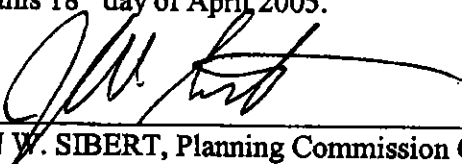
33. The applicant shall submit a request, in writing, for the annual review by the Planning Commission for compliance with conditions of Resolution 05-08. The request for the annual review for compliance with conditions shall be conducted in accordance with the annual review of the Right of Entry Permit conducted by the Los Angeles County Department of Beaches and Harbors.
34. The expenses incurred in meeting the conditions of approval of Resolution 05-08 are the

sole responsibility of the project applicant and property owner.

Section 5. Certification.

The Planning Commission shall certify the adoption of this Resolution.

PASSED, APPROVED AND ADOPTED this 18th day of April 2005.


JOHN W. SIBERT, Planning Commission Chairman

ATTEST:


LISA A. TENT, Planning Commission Secretary

LOCAL APPEAL - The decision of the Planning Commission may be appealed by an aggrieved person to the City Council, within 10 days of the decision, by written statement and upon payment of an appeal fee of \$282.00. The grounds for appeal are limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies of the Coastal Act. Appeal forms may be found online at www.ci.malibu.ca.us or in person at City Hall, or by calling (310) 456-2489 ext. 245.

COASTAL COMMISSION APPEAL - An aggrieved person may appeal the Planning Commission's decision to the Coastal Commission within 10 working days of the issuance of the City's Notice of Final Action. Appeal forms may be found online at www.coastal.ca.gov or in person at the Coastal Commission South Central Coast District office located at 89 South California Street in Ventura, or by calling 805-585-1800. Such an appeal must be filed with the Coastal Commission, not the City.

I CERTIFY THAT THE FOREGOING RESOLUTION NO. 05-08 was passed and adopted by the Planning Commission of the City of Malibu at the regular meeting thereof held on the 18th day of April 2005, by the following vote:

AYES:	5	Commissioners:	Anthony, Randall, Moss, Schaar and Sibert
NOES:	0		
ABSTAIN:	0		
ABSENT:	0		

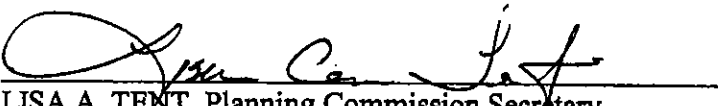

LISA A. TENT, Planning Commission Secretary



EXHIBIT D

City of Malibu

23815 Stuart Ranch Road ! Malibu, California ! 90265-4861
(310) 456-2489 ext. 250 ! fax (310) 456-7650

March 29, 2010

Michael Rodriguez
Los Angeles County Department
Of Beaches and Harbors
13837 Fiji Way
Marina del Rey, CA 90292

**Reference: Coastal Development Permit No. 04-035
33904 Pacific Coast Highway**

Dear Mr. Rodriguez:

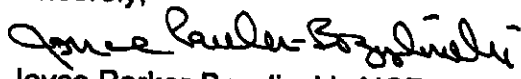
On April 18, 2005, the Coastal Development Permit (CDP) listed above was approved by the City of Malibu Planning Commission. The approval was for the development of the San Nicholas Canyon Chumash Discovery Center and Creek Restoration to be completed by the Wishtoyo Foundation.

Staff has reviewed the development that has taken place to date, including the creek restoration and has determined that the current development is in conformance with the CDP that was issued for the site. Furthermore, the removal of the debris and non-native vegetation from the onsite drainage feature was reviewed by the City's Environmental Review Board.

In addition, the City of Malibu has reviewed the future development that is proposed by the Wishtoyo Foundation. This work includes the placement of a 10 foot by 10 foot prefabricated shed, new awning in the ceremonial circle and the parking of a 30 foot long recreational trailer that will be used for storage purposes only and not habitation. Pursuant to the City of Malibu's Local Implementation Plan the proposed site development is exempt from requiring a CDP or an Amendment to the existing CDP since it will take place outside of the onsite environmentally sensitive habitat area. However, the applicant has been instructed that all future development is also subject to review and approval by the County of Los Angeles since development will take place on a parcel owned by the County.

If you have any questions regarding this matter, do not hesitate to contact Richard Mollica, Associate Planner at (310) 456-2489, extension 346 or at rmollica@ci.malibu.ca.us

Sincerely,


Joyce Parker-Bozylinski, AICP
Planning Manager

